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Chairman: Mr. Benmehidi ..... (Algeria)

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The meeting was called to order at 10.15 a.m.

Election of officers

1. **The Chairman** recalled that as at 10 June 2009, when the Committee had elected its officers for the sixty-fourth session of the General Assembly, the Group of Latin American and Caribbean States had not yet nominated a candidate for Vice-Chairman. Furthermore, Mr. Cartuyvels (Belgium), who had been elected Rapporteur for the session, had subsequently returned to his capital. It would therefore be necessary for the Committee to elect a Vice-Chairman and a new Rapporteur. He had been informed that the Group of Latin American and Caribbean States had nominated Mr. Böhlke (Brazil) for the post of Vice-Chairman and that the Group of Western European and Other States had nominated Mr. Janssens de Bisthoven (Belgium) for the post of Rapporteur.

2. *Mr. Böhlke (Brazil) was elected Vice-Chairman and Mr. Janssens de Bisthoven (Belgium) was elected Rapporteur by acclamation.*

Organization of work (A/C.6/64/1, A/C.6/64/L.1)

3. **The Chairman** drew attention to the allocation of agenda items to the Committee, as contained in document A/C.6/64/1, and to the note by the Secretariat entitled "Organization of work" (A/C.6/64/L.1), in particular paragraphs 7 to 10 concerning the establishment of working groups.

4. With regard to agenda item 142, "Administration of justice at the United Nations", it was his understanding that the Committee wished, in accordance with the recommendation of the Ad Hoc Committee on the Administration of Justice at the United Nations, to establish a working group to be chaired by Mr. Sivagurunathan (Malaysia), with a view to continuing the discussion on the outstanding legal aspects of the administration of justice at the United Nations, taking into account the deliberations in the Ad Hoc Committee and bearing in mind the decision of the Assembly to revert to the issue of the scope of the system of administration of justice at its sixty-fifth session, with a view to ensuring that effective remedies were available to all categories of United Nations personnel, with due consideration given to the types of recourse that were the most appropriate to that end, and that the working group would be open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency (IAEA).

5. *It was so decided.*

6. **The Chairman**, referring to agenda item 106, "Measures to eliminate international terrorism", said it was his understanding that the Committee wished, in accordance with the recommendation of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, to establish a working group, to be chaired by Mr. Perera (Sri Lanka), with a view to finalizing the draft comprehensive convention on international terrorism and continuing to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations, and that the working group would be open to all States Members of the United Nations or members of specialized agencies or of IAEA.

7. *It was so decided.*

8. **The Chairman**, referring to agenda item 78, "Criminal accountability of United Nations officials and experts on mission", said it was his understanding that the Committee wished to establish a working group, to be chaired by Ms. Telalian (Greece), to consider the report of the Group of Legal Experts (A/60/980), in particular its legal aspects, taking into account the views of Member States and the information contained in the note by the Secretariat (A/62/329), and that the working group would be open to all States Members of the United Nations or members of specialized agencies or of IAEA.

9. *It was so decided.*

10. **The Chairman** drew attention to the proposed timetable for the Committee's work, contained in paragraphs 3 to 6 of the note entitled "Organization of work" (A/C.6/64/L.1). A table showing the proposed overall work programme had been posted on the Committee's website. In accordance with established practice, the proposed work programme would be applied with flexibility in light of the progress made by the Committee, which would take action on draft resolutions as soon as they were ready for adoption.

11. The Committee must allow sufficient time for preparation and consideration of the estimates of expenditure arising from draft resolutions. Since it was scheduled to conclude its work on 14 November 2009,

all draft resolutions with financial implications must be submitted to the Fifth Committee by 31 October 2009, except for those relating to agenda items scheduled to be considered after that date. He took it that the Committee wished to proceed accordingly.

12. *It was so decided.*

13. **The Chairman** stressed that the Committee was required to make full use of conference resources and facilities. Although over the past four sessions it had shown an improvement in that regard, during its most recent session it had lost almost nine hours because of meetings starting late and ending early. Its conference service utilization factor would improve further if discussions began on time and if, in the event that the Committee was unable to proceed with discussion of an item, delegations were prepared to consider the next item on the agenda.

14. He took it that the Committee wished, as in the past, to follow the practice of the General Assembly in giving precedence on the list of speakers to representatives of regional groups or other groups of States.

15. *It was so decided.*

16. In that connection, he drew attention to paragraph 13 of General Assembly resolution 59/313, which invited Member States that were aligned with statements already made by the chair of a group of Member States, where possible, to focus additional interventions made in their national capacity on points that had not already been adequately addressed in the statements of the groups in question, bearing in mind the sovereign right of each Member State to express its national position.

Agenda item 142: Administration of justice at the United Nations (A/64/55, A/64/229, A/64/292, A/64/269 and A/64/314)

17. **Mr. Sivagurunathan** (Malaysia), Chairman of the Ad Hoc Committee on the Administration of Justice, introducing the report of the Ad Hoc Committee (A/64/55), said that during its discussions, held at United Nations Headquarters from 20 to 24 April 2009, the working group of the whole of the Ad Hoc Committee had focused on the scope *ratione personae* of the new system of administration of justice, in particular with regard to the situation of non-staff personnel, the remedies available to the various categories of such personnel and possible options for ensuring that they were provided with effective mechanisms for the settlement of disputes with the Organization. The working group had also addressed the issues of legal assistance to staff; the filing of applications by staff associations; and the selection and nomination of candidates for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. He was pleased that, as recommended by the Ad Hoc Committee, the Sixth Committee had decided to establish a working group on administration of justice at the United Nations.

18. **Ms. Negm** (Egypt), speaking on behalf of the Group of African States, stressed that it was important for all non-staff personnel to have access to effective remedies and adequate means of legal redress. The Group supported the Secretary-General's efforts to strengthen the Mediation Division and the activities of the Office of the Ombudsman, which should continue to be guided by the core principles of independence, neutrality, confidentiality and informality. All individuals accused of a particular act of misconduct should receive equal treatment, regardless of their duty station, nationality, position or category. Lastly, the Group believed that the time was ripe to finalize all pending issues, including that of scope.

19. **Mr. Heller** (Mexico), speaking on behalf of the Rio Group, said that the Group noted with satisfaction the many appointments of senior internal justice officials in 2009. At the current session, the Committee should focus on consideration and adoption of the rules of procedure of the Dispute and Appeals Tribunals; if time permitted, other legal matters that fell within the scope of General Assembly resolution 63/253 could be discussed. The Rio Group looked forward to receiving a progress report from the Secretariat on the key components of the administration of justice system, particularly management evaluation and the Mediation Division. He urged the Office of the Ombudsman to issue its own terms of reference as soon as possible and to indicate how the harmonization of its functions within the United Nations system was proceeding. Other areas requiring attention were providing for proper interaction between the formal and informal systems, ensuring sufficient access for staff members in the field and finalizing the draft code of conduct for judges.

20. The Rio Group attached great importance to ensuring a smooth, gap-free conversion to the new

system and took note of the Secretary-General's bulletin on transitional measures related to the introduction of the new system of administration of justice (ST/SGB/2009/11). With regard to cost-sharing arrangements, the relevant entities had been given time to consider whether to join the new system and negotiations on the matter should have been concluded. The Group stressed the need to clear the backlog of cases before the Administrative Tribunal and to clearly define lines of responsibility and accountability during the investigative process under the new system. The positive and functional elements of the old system should be retained; in particular, the new Office of Staff Legal Assistance should continue to provide legal advice and representation as its predecessor, the Panel of Counsel, had done.

21. **Mr. Lundkvist** (Sweden), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania and Serbia; and, in addition, Norway, the Republic of Moldova and Ukraine, said that the new administration of justice system had already begun to prove itself. The European Union welcomed the adoption of General Assembly resolution 63/253; the appointment of all the judges for the Dispute and Appeals Tribunals; the establishment of the Office of Administration of Justice, the Office of the Ombudsman and the Registries; and the submission of draft rules of procedure of the two Tribunals. It was ready to approve the draft rules without delay and expected other delegations to be in a position to do the same.

22. Several outstanding issues would have to be addressed by both the Fifth and Sixth Committees, including those relating to effective remedies for non-staff personnel, the provision of legal assistance to staff and the question of whether staff associations could file applications before the Tribunals. In considering those matters, delegations should trust the new system to establish its own working practices, avoid micromanagement, limit their efforts to areas in which their guidance would be truly useful and focus on how best to prepare for the sixty-fifth session of the General Assembly, which would conduct a comprehensive review of the new system.

23. The European Union had consistently stressed that the new system should be consistent with a number of fundamental principles of the rule of law and due process, including the right to an effective remedy, equal access to justice and the right to be heard. Providing an effective remedy to all persons who performed work for the Organization was of paramount importance to its credibility and effectiveness; consideration should be given to the most appropriate types of recourse.

24. Lastly, the Working Group should take up the suggestions contained in the report of the Ad Hoc Committee (A/64/55) so that the Committee could make meaningful proposals to the Fifth Committee prior to the General Assembly's consideration of the agenda item at its sixty-fifth session.

25. **Mr. Morrill** (Canada), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), said that, since the United Nations sought to promote respect for individual rights and the rule of law, it was vital for its internal system of administration of justice to reflect those values. The system should also be fair and effective and should have the trust of personnel, administrators and Member States. The CANZ countries were pleased to note that, as a result of the past work of the Sixth and Fifth Committees, the new system was now in operation. The transition from the old to the new system had been smooth and the appointment of judges had proceeded in an exemplary manner.

26. The CANZ countries endorsed the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and were pleased with the performance of both Tribunals to date. However, since the new system had been in operation for only a few months, the time was not yet ripe for its further modification or extension. Considerable experience with the new system should be accumulated before consideration of further issues relating to the administration of justice within the United Nations.

27. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that the United Nations, while working to promote the rule of law, democracy, transparency and good governance around the world, had long had an internal system of administration of justice that was slow, cumbersome, costly and contrary to international law and international human rights norms. He therefore welcomed the introduction of the new system, which must distinguish itself from the old one by being independent, professional and accountable, inspiring confidence among staff and promoting a better working

environment. Appointments of judges should always be based on merit and competence rather than patronage and subjective criteria.

28. With regard to disciplinary matters, the Secretary-General's proposal to implement a limited delegation of authority in a phased manner to heads of mission and offices away from Headquarters should be taken up swiftly, beginning with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the United Nations Mission in the Sudan (UNMIS), the African Union-United Nations Hybrid Operation in Darfur (UNAMID), the United Nations Mission in Liberia (UNMIL) and the United Nations Operation in Côte d'Ivoire (UNOCI).

29. As to the informal settlement of disputes, the link between the formal and informal systems should be respected. A provision stating that disputes not previously submitted for the mediation procedure could not be brought before the Dispute Tribunal would make the system much more practical and effective and would help to avoid unnecessary litigation. His delegation welcomed the two-tier formal system, which guaranteed that each case would be judged de facto and de jure. It would also make it possible to limit judicial errors and dogmatism and would allow the parties an opportunity to strengthen their cases. Binding decisions and appropriate remedies would restore the prestige of the United Nations in that regard.

30. **Mr. Bichet** (Switzerland) said that his country, as both a Member State and a host country of the United Nations, welcomed the recent establishment of a new system for the administration of justice. Certain provisions of the rules of procedure of the two new Tribunals did not fully meet his delegation's expectations, but in the interests of compromise and allowing the new system to function, it was prepared to accept them as they stood, and he hoped that other delegations would show similar flexibility.

31. The primary objective of the administration of justice reform should be to allow all persons, regardless of the nature of their contractual relationship with the United Nations, to be heard by an independent body if they felt that their rights or the rules of the Organization had not been respected. Any exclusion of particular categories of staff from the new system should be clearly justified and based on objective grounds, and those excluded must have access to other effective avenues of appeal. It was a welcome development that, under General Assembly resolution 63/253, interns, type II gratis personnel and volunteers other than United Nations Volunteers could request a management evaluation and that all persons who had had access to the Office of the Ombudsman under the old system would also have access to the new informal system.

32. However, those provisions, on the implementation of which his delegation wished to be kept informed, could not replace recourse to fair proceedings, which only an independent body was capable of assuring. The creation of a separate independent body for the staff categories in question was not an appropriate solution, except in the case of consultants and individual contractors, whose relationship with the Organization was of a different nature. For the latter category, his delegation was open to discussing the proposal made by the United States delegation. For other staff categories, it would be more efficient and less costly to allow them access to the Dispute and Appeals Tribunals. In 2008, only 8 per cent of cases brought to the attention of the new integrated Office of the United Nations Ombudsman and Mediation Services had been brought by non-staff personnel, which included consultants, individual contractors, interns, volunteers and military. If a separate avenue of appeal were created for consultants and individual contractors, who had accounted for the majority of those cases, opening access to the Tribunals to the other categories of personnel would increase the number of cases by only 2 or 3 per cent.

33. **Ms. Negm** (Egypt) said that it was important to continue the process of reforming the United Nations internal justice system, both formal and informal, so as to strengthen the rule of law in the Organization and to provide legal and judicial protection for all its personnel. The rules of procedure of the two new Tribunals were consistent with their statutes and should be approved.

34. The jurisdiction of the formal system of justice should be expanded to cover non-staff personnel, since the new system was intended to ensure impartiality, fairness, transparency and efficiency and to uphold the rule of law within the Organization. The extent to which the mechanisms currently available ensured the rights of non-staff personnel should be evaluated, especially as very few cases involving such personnel were settled through the Arbitration Rules of the

United Nations Commission on International Trade Law (UNCITRAL) owing to the costs involved.

35. With regard to cases of misconduct or criminal behaviour, it was important to verify that the staff member had committed the act in question and to achieve proportionality between the gravity of the act and the disciplinary measures imposed. Moreover, the principle that all were equal before the law should be applied through the imposition of the same penalties for the same misconduct, where the circumstances were similar or identical. In certain cases referred to in the report on the practice of the Secretary-General in disciplinary matters and possible criminal behaviour (A/64/269), staff members who had committed identical offences had been subject to different disciplinary measures. Action should be taken to eliminate such disparities.

36. The increased number of cases brought to the attention of the Office of the United Nations Ombudsman and Mediation Services was a positive phenomenon, since it helped to reduce the number of cases in the formal system, thus accelerating the achievement of justice and reducing costs. Her delegation welcomed the steps taken by the Office to promote informal approaches to resolving conflict at an early stage. The Office should be guided by the core principles of independence, neutrality and confidentiality and should employ fair and equitably administered processes. It should also conclude the process of establishing a roster of mediators and extend it to serve the regional branch offices. Her delegation also supported efforts to raise awareness of the services provided by the Office, particularly among staff in remote regions. Such efforts could include the distribution of flyers, the dissemination of information via the Intranet and presentations to staff, particularly new recruits.

37. **Ms. Onanga** (Gabon) said that ensuring uniformity in the administration of justice at the three duty stations where the Registries had been established should be a priority. Her delegation attached great importance to multilingualism in the new system; it was therefore regrettable that none of the judges of the Dispute Tribunal in New York spoke French, which was one of the working languages of the United Nations. That situation was inconsistent with General Assembly resolution 62/228, in which the Assembly stressed the importance of ensuring access for all staff members to the system of administration of justice, and action should be taken to address the problem. Lastly, the formal system should be extended to non-staff personnel, who should also continue to have access to the informal system of dispute resolution.

38. *Mr. Baghaei Hamaneh (Islamic Republic of Iran), Vice-Chairman, took the Chair.*

39. **Mr. Choudhary** (India) welcomed the appointment of the judges, including one from India, to the new Tribunals. The new formal system of administration of justice, together with the strengthened informal system, would make it possible to resolve work-related disputes in an independent, transparent, impartial, efficient and effective manner and would help to ensure trust between staff and management. However, further discussion was required on some outstanding issues, including the scope of the new system, legal assistance to staff and the question of whether staff associations could file applications before the Dispute Tribunal.

40. General Assembly resolution 63/253 recognized management evaluation as a key component of the new system of administration of justice, and it granted interns, type II gratis personnel and volunteers other than United Nations Volunteers the possibility of requesting such an evaluation. However, it did not grant those categories of personnel access to the new Tribunals. His delegation believed that all members of the United Nations workforce should have access to justice and was willing to consider various proposals and options in that regard. The Office of Staff Legal Assistance should be strengthened so as to ensure that no one was left without legal recourse. The new system of administration of justice should remain consistent with the outcome of human resources reform in the United Nations system.

41. **Ms. Sarne** (Philippines) said that the rules of procedure of the new Tribunals were crucial to achieving the goal of an independent and impartial system of administration of justice; she looked forward to their approval. If proceedings of the Dispute Tribunal were suspended for referral to mediation, the timing of any such suspension must be appropriate and the mediation itself must be conducted in a timely manner, since justice delayed was justice denied. Moreover, mediation must result in fair and timely decisions if it was to be viewed as a desirable method of dispute resolution.

42. Turning to the report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/64/314), she noted that action that had been taken to address past systemic issues, including the introduction of management development courses, the revamping of the terms and procedures of the national competitive examination programme and the harmonization of contracts. Also to be commended were the Office's efforts to inform staff about its role and activities and to emphasize the value of the informal resolution of conflicts. Lastly, her delegation welcomed the efforts being made to ensure a smooth transition from the old system of administration of justice to the new one, particularly by the recently abolished Joint Appeals Board, Joint Disciplinary Committees and Panel of Counsel.

43. **Mr. Kuzmin** (Russian Federation) said that, through close cooperation and within a relatively short space of time, Member States had laid the foundations for an independent, transparent, professional and decentralized system of administration of justice that was consistent with international law and with generally accepted standards for judicial procedures, and which would help to strengthen the rule of law within the United Nations. The new Tribunals would require continued support from Member States in order to fulfil the objective of qualitatively improving the Organization's dispute settlement machinery and to settle cases inherited from the old system. Greater use of informal procedures, particularly mediation services, could help to ease the burden. His delegation stood ready to discuss the rules of procedure of the new Tribunals with a view to recommending them for approval.

44. The new system of administration of justice should be subject to periodic review. Effective remedies should be available to all categories of United Nations personnel, in accordance with resolution 63/253. In that regard, a useful discussion of the scope of the new system had taken place at the 2009 session of the Ad Hoc Committee on the Administration of Justice at the United Nations. His delegation was also interested in further discussion of issues relating to the provision of legal assistance.

45. **Mr. Gbouabré** (Côte d'Ivoire) said that the new system of administration of justice, comprising both informal conflict resolution and the two-tier formal system, would help to ensure that the rights of various categories of personnel were respected and that all were held responsible for their actions in the event of serious misconduct. One of the outstanding issues to be resolved was the scope of the new system. In accordance with the principle of equality of all before the law, effective remedies should be available to all categories of United Nations personnel, including non-staff personnel. Some key elements of administrative law should be given consideration. As a first step, non-staff personnel performing personal service for the United Nations should be entitled to request a management evaluation of a contested decision and, as a second step, they should have the opportunity to appeal the first decision. The Working Group could discuss that issue further. Other matters requiring further discussion were legal assistance to staff and the question of whether staff associations could file applications.

46. The presence of a United Nations peacekeeping mission in Côte d'Ivoire for nearly seven years had raised the question of punishment for a number of types of misconduct, sometimes criminal in nature, by officials and other staff on mission abroad or at Headquarters. In accordance with the principles of legality and due process, the possibility of Member States or other interested parties filing complaints should be discussed. The United Nations wished to set an example in terms of protecting the rights of its staff. It should also ensure that no shadow of a doubt could be cast on their accountability and professional integrity.

47. **Mr. Simonoff** (United States of America) said that the introduction of the new system of administration of justice was a major milestone in the reform of the United Nations. The establishment of the two new Tribunals would have a significant positive impact on the transparency, fairness, efficiency and accountability of the United Nations personnel system. One of the Committee's tasks at the current session was to decide whether to recommend for approval the rules of procedure of each Tribunal. Article 7 of the statute of the Dispute Tribunal and article 6 of the statute of the Appeals Tribunal provided that certain provisions should be included in the rules. In his delegation's view, each set of rules was consistent with the respective Tribunal's statute.

48. The new system would need to operate for some time before a full assessment could be made of its work. That was why the General Assembly, in its resolution 63/253, had requested the Secretary-General

to review the new system and report thereon to the General Assembly at its sixty-fifth rather than its sixty-fourth session. Similarly, the statutes of the Tribunals would be reviewed at the sixty-fifth session.

49. With regard to the scope of the new system, his delegation had shared some ideas about a possible approach to alternative remedies for personal service contractors at the 2009 session of the Ad Hoc Committee on the Administration of Justice at the United Nations. His delegation was interested in hearing the views of other delegations on alternative ways of including non-staff personnel in the formal system and looked forward to further discussions of the question of scope and other outstanding legal issues in the Working Group.

50. *Mr. Benmehidi (Algeria) resumed the Chair.*

51. **Ms. Medina-Carrasco** (Venezuela) said that justice would not be served in the Organization unless collective action was allowed and staff associations were permitted to act on behalf of staff in the new formal system. Article 2, paragraph 3, of the statute of the Dispute Tribunal, which provided that the Tribunal was competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association, was inadequate, since it restricted the right of staff to be represented by the staff association to which they belonged. The friend-of-the-court arrangement deprived such associations of legal standing by treating them as third parties extraneous to the case and incompetent to represent the staff member, thus prejudicing the right of staff members to self-defence. Staff associations should also have the right to represent groups of staff before the Dispute Tribunal in the case of administrative decisions that were alleged to be in non-compliance with the terms of appointment or the contract of employment. Lastly, with regard to the informal system, only the parties to a dispute should be competent to initiate or terminate the mediation process, without interference from the Tribunal.

The meeting rose at noon.